

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
KEVIN J. MCCABE,	:	LS0410061RSG
RESPONDENT.	:	

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Division of Enforcement Case No. 04RSG019

The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Regulation and Licensing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 22nd day of June, 2005.

Celia M. Jackson, Secretary  
Department of Regulation and Licensing

STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF	
DISCIPLINARY PROCEEDINGS AGAINST	PROPOSED DECISION
	AND ORDER
KEVIN J. McCABE,	LS 0410061RSG
Respondent.	

PARTIES

The parties to this action for the purposes of Wis. Stat., § 227.53, are:

Kevin J. McCabe  
1223 Hazel Street  
Cleveland, WI 53105

John N. Schweitzer, Prosecuting Attorney  
Division of Enforcement  
Department of Regulation and Licensing  
1400 East Washington Avenue, P.O. Box 8935  
Madison, WI 53708-8935

PROCEDURAL HISTORY

A hearing on the Complainant's Motion for Default and Default Judgment in the above-captioned matter was held on April 25, 2005, before Administrative Law Judge Colleen M. Baird. The Division of Enforcement appeared by Attorney John N. Schweitzer. The respondent, Kevin J. McCabe, did not appear and did not file an answer to the complaint.

Based on the entire record of this case, the undersigned administrative law judge recommends that the Department of Regulation and Licensing adopt as its final decision in this matter, the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. The Respondent, Kevin J. McCabe, (D.O.B. May 5, 1983) held a private security permit number 108-24720 issued by the Wisconsin Department of Regulation and Licensing (hereinafter referred to as the "Department").
2. As of September 14, 2004, Mr. McCabe's private security permit was in expired status, but he retains a right to apply for the renewal of the permit.
3. Mr. McCabe's last-known address on file with the Department of Regulation and Licensing is 1223 Hazel Street, Cleveland, WI 53015.
4. On March 4, 2004, Mr. McCabe was arrested for Impersonating a Peace Officer and Disorderly Conduct. The criminal complaint filed against Mr. McCabe stated that he had unlawfully impersonated a peace officer with the intent to mislead others into believing that he actually was a peace officer.
5. The criminal complaint alleges that Mr. McCabe went to the Riverview Middle School in the City of Plymouth, Wisconsin March 5, 2004, displayed his permit to the principal and the guidance counselor at the school, and claimed to be a special investigator for the Sheboygan County Sheriff's Department.
6. The criminal complaint further indicated that McCabe had appeared at the school on the prior day, March 4, 2004, and created a disturbance when he was informed that he was not allowed to have contact with his female cousin who was a student at the school and that he was to go to the office to obtain a visitor badge.
7. On June 28, 2004, the respondent pled no contest to the Disorderly Conduct, a Class B Misdemeanor, and the charge Impersonating a Peace Officer was dismissed.
8. Mr. McCabe did not report his conviction for Disorderly Conduct to the Department.

9. On March 8, 2004 Mr. McCabe's residence was searched and he was arrested on a felony charge of Receiving Stolen Property and a misdemeanor charge of Possessing a Butterfly Knife. The police report indicates that \$2,869 worth of stolen property belonging to Mr. McCabe's prior employer was found in his residence, along with the butterfly knife. Mr. McCabe worked for the prior employer as a security guard.

10. On January 21, 2005, Mr. McCabe entered a plea of no contest and was convicted of Receiving Stolen Property, a Class A Misdemeanor.

11. Mr. McCabe did not report his conviction for Receiving Stolen Property to the Department.

12. The private security permit issued to Mr. McCabe was summarily suspended by the Department on September 24, 2005.

### CONCLUSIONS OF LAW

1. The Department of Regulation and Licensing has jurisdiction over this matter, pursuant to Wis. Stat., § 440.26 (6).

2. Respondent's conduct as described in paragraphs #7 and #10 of the Findings of Fact constitutes unprofessional conduct within the meaning of Wis. Stat., § 440.26(6)(a)(1), and Wis. Admin. Code, RL 35.01(2), because he was convicted of misdemeanor criminal offenses that are substantially related to the practice of a private security guard.

3. Respondent's conduct as described in paragraphs #8 and #11 of the Findings of Fact constitutes unprofessional conduct within the meaning of Wis. Stat., § 440.26 (4m)(b), because he failed to notify the Department in writing of the date, place and nature of his misdemeanor convictions within 48 hours after the judgment of conviction and to provide to the Department a copy of the complaint or other information which described the judgment of conviction.

4. By failing to file an Answer as required by Wis. Admin. Code RL 2.09, and by failing to appear at the default hearing the respondent is in default under Wis. Admin. Code RL 2.14, and the Department of Regulation and Licensing may make findings and enter an order on the basis of the Complaint and the evidence presented at the hearing.

### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the respondent's private security permit in Wisconsin, number 108-24720, and the right to renew that permit, is hereby REVOKED.

IT IS FURTHER ORDERED that full costs of this proceeding shall be assessed against the respondent.

### OPINION

Under section RL 2.14 of the Wisconsin Administrative Code, a respondent who fails to answer a complaint or fails to appear at a hearing is in default and the disciplinary authority may make findings and enter an order on the basis of the Complaint and other evidence. In this case, the respondent failed to file an answer to the Complaint and failed to appear at the scheduled hearing on the Motion for Default Judgment, which was held on April 25, 2005.

The evidence shows that the Complaint and Notice of Hearing were properly served on the respondent. The Complaint and Notice of Hearing was sent by certified mail on October 6, 2004, to respondent's last address of record on file with the Department. (Ex. 4) The postal return receipt shows that respondent accepted delivery of the Complaint and Notice of Hearing on October 8, 2004. (Ex.4) The respondent did not file an answer to the Complaint. On October 27, 2004, a Notice of Motion for Default Judgment was sent to the respondent's address of record on file with the Department.

On November 19, 2004, pursuant to respondent's indication of possible legal representation, a pre-hearing conference was held and the undersigned contacted Attorney Robert Wells, to determine if he was representing the respondent in this

proceeding. Attorney Wells indicated that he would not be representing the respondent and that he did not believe the respondent would contest the Motion for Default Judgment.

Attempts to secure respondent's participation in subsequent pre-hearing conferences were unsuccessful. A Notice of Hearing on the Motion for Default was sent to respondent's address of record on file with the Department on April 5, 2005. None of the mailings were returned or marked as undeliverable.

Throughout this proceeding, the respondent had ample opportunity to appear and defend himself. However, to date, the respondent has not filed an answer to the allegations in the Complaint or appeared at the hearing on the Motion for Default Judgment. The Complainant has requested that the discipline imposed upon respondent be that of license revocation.

Accordingly, after careful review of the allegations forming the basis for discipline in this case, and given the failure of respondent to appear or provide any evidence, I conclude that the disciplinary request is appropriate.

It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481, 485 (1969). There is nothing in the record to suggest that imposing any discipline short of revocation would protect the public, have a rehabilitative effect on the respondent, or deter other licensees from engaging in similar conduct.

### Costs

Section 440.22(2), Stats., provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder.

Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against the respondent is a discretionary decision on the part of the Department and such discretion extends to the decision whether to assess the full costs or only a portion of the costs. It is the recommendation of the undersigned that the full costs of the proceeding be assessed against respondent on the basis of fairness to other members of the profession.

The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession.

It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding.

Dated this \_\_\_\_\_ day of May, 2005

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Colleen M. Baird  
Administrative Law Judge